

COMMISSION TO REVISE THE ANNOTATED CODE,  
MARYLAND.

Staff Report No. 56

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REVISE THE ANNOTATED CODE

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Staff Report No. 56.



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The Commission directed that HG § 2-104(k) be reexamined for conformity to other provisions for issuance and enforcement of subpoenas and administration of oaths.

MODEL PROVISIONS:

The Model addresses placement of provisions on subpoenas, oaths, and investigations, rather than specific language to be used in a provision. [See pages 31 and 32 of Commission Draft 3.]

While § 30-312(f) contains a provision enabling a board to issue subpoenas and administer oaths, this provision apparently was intended to illustrate only placement of a provision that applied to disciplinary hearings. In this regard, the staff notes that, while the Health Occupations Article contains numerous provisions on subpoenas, these provisions do not state the scope of the subpoena. [See pages 12 through 14 of this report.]

The Model calls for the absence of provisions for issuing subpoenas or administering oaths to be noted. The Model also states that the Commission Report to the General Assembly should include a recommendation on adding express provisions for enforcement of the subpoena and, as example provisions, a citation to TR § 12-108 and Article 56, § 306. [See pages 8 and 10 of this report.]

TR § 12-108:

TR § 12-108 closely follows the source law from which it was derived -- former Article 66 1/2, § 2-319(e) and (f). [See pages 8 and 9 of this report.]

FI § 11-413:

This section enables the Commissioner of Consumer Credit to investigate complaints under the provisions on sales finance companies. [See page 11 of this report.]

This section appeared to be narrower than Article 43, § 3 in two respects. Under § 11-413(c)(2), the Commissioner may subpoena "witnesses", although § 11-413(d)(2)(ii) does provide for a court order to produce "any necessary records, documents, or other evidence"

Also under § 11-413(c)(3), the Commissioner may "take depositions of witnesses who reside outside of this State ...". The section does not provide specifically for taking testimony of other witnesses.

REDRAFT:

The redraft is conformed to TR § 12-108, except in the following respects.

An introductory clause, such as "in any matters subject to the jurisdiction of the Secretary" is not included. Although, e.g., the disciplinary hearings of the health occupations boards are not within the jurisdiction of the Secretary, for purposes of those hearings, a board that has not been given specific powers as to oaths and subpoenas -- issue subpoenas and administer oaths -- as designees of the Secretary under Article 43, § 3.

As the Commission directed, references to "evidence" is substituted for the former reference to "papers, books {and} documents" and, thus, encompassing "tangible things", in addition to documents. However, the staff notes that, in Cocco v. Maryland Commission on Medical Discipline, 39 Md. App. 170, 384 A.2d 766 (1978), the Court of Special Appeals held that the power of the Commission "to issue subpoenas" under former Article 43, § 130(i) was limited by former Article 43, § 130A(a)(3), which stated that "minutes" and "notes" of a hospital review committee were not "subject to review or discovery by any person". In Unnamed Physician v. Commission, 285 Md. 1 (1979), the Court of Appeals reversed that holding, in part, finding that the Commission was not a "person" for purposes of § 130A(a)(3). [See HO §§ 14-501(g) and 14-512(a)(3), set out on page 13 of this report.]

The distinction on payment of witness fees and express authority as to depositions are retained.

In subsection (k)(2), the word "relevant" is not added in the reference to compelling "testimony or the production of evidence". The phrase itself, would appear unnecessary given the jurisdiction to "compel obedience to the order or subpoena", but is retained for conformity to TR § 12-108.

(K) SUBPOENAS; OATHS; TESTIMONY.

[(43 § 3). Administration of oaths; subpoenas; witnesses.

The Secretary of Health and Mental Hygiene or anyone he designates shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and production of papers, books, documents and testimony. In case of the failure of any person to comply with any subpoena lawfully issued, or on refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the circuit court of any county or the judge thereof, or of either of the Circuit Court of Baltimore City or the judges thereof, or of, (sic) on application of the Secretary of Health and Mental Hygiene, or his designee, to compel obedience by attachment proceedings for contempt. Every witness who shall appear before the Secretary or his designee by their orders shall receive for his attendance the fees now provided for witnesses in civil cases in courts of record, which shall be audited and paid by the State in the same manner as other expenses are audited and paid upon the presentation of properly verified vouchers. But no witness subpoenaed at the instance of parties other than the Secretary or his designee shall be entitled to compensation from the State for attendance or travel unless the Secretary or his designee shall certify that his or her testimony was material to the matter investigated. Fees paid under this section shall be charged to the general appropriation for the Department of Health and Mental Hygiene. The Secretary or his designee may, in any investigation, cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of record.]

(1) THE SECRETARY OR A DESIGNEE OF THE SECRETARY MAY SUBPOENA ANY PERSON OR EVIDENCE, ADMINISTER OATHS, AND TAKE DEPOSITIONS AND OTHER TESTIMONY.

(2) IF A PERSON FAILS TO COMPLY WITH A LAWFUL ORDER OR SUBPOENA ISSUED UNDER THIS SUBSECTION, THE SECRETARY OR DESIGNEE MAY PETITION A COURT OF COMPETENT JURISDICTION TO COMPEL OBEDIENCE TO THE ORDER OR SUBPOENA OR

TO COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.

(3) A WITNESS WHO IS SUBPOENAED AT THE REQUEST OF THE SECRETARY OR DESIGNEE IS ENTITLED TO RECEIVE THE SAME FEES AND MILEAGE PROVIDED FOR BY LAW IN CIVIL CASES. HOWEVER, A WITNESS WHO IS SUBPOENAED AT THE REQUEST OF ANY OTHER PARTY IS NOT ENTITLED TO FEES OR MILEAGE, UNLESS THE SECRETARY OR DESIGNEE CERTIFIES THAT THE TESTIMONY WAS MATERIAL TO THE MATTER INVESTIGATED. A FEE AND MILEAGE PAID UNDER THIS SUBSECTION SHALL BE AUDITED AND PAID BY THIS STATE IN THE SAME WAY OTHER EXPENSES ARE AUDITED AND PAID AND SHALL BE CHARGED TO THE GENERAL APPROPRIATION FOR THE DEPARTMENT.

REVISOR'S NOTE: This subsection is new language derived from former Article 43, § 3.

In paragraph (1) of this subsection, the term "evidence" is substituted for the references to "papers", "books", and "documents", for conformity to Maryland Rules 115a. and 407B., which permit a subpoena for the production of "books, papers, documents or other tangible things ...". Similarly, paragraph (2) of this subsection is revised to refer to "production of evidence".

Also in paragraph (1) of this subsection, the former specific power to "certify to official

acts" is deleted as unnecessary.

In paragraph (2) of this subsection, the reference to a failure "to comply with a lawful order" is new language added to provide for enforcement of the power to administer oaths. In light of this addition, the former specific reference to a "refusal of any witness to testify ..." is deleted as unnecessary.

Also in paragraph (2) of this subsection, the phrase "may petition a court ... to compel obedience" is substituted for the directive that "it shall be the duty of the ... court ... on application ... to compel obedience", which was misleading in light of the prerogatives of courts.

Also in paragraph (2) of this subsection, the reference to a "court of competent jurisdiction" is substituted for the references to specific courts and the judges, for brevity and conformity to similar provisions elsewhere in the Code.

Also in paragraph (2) of this section, the former reference to an "attachment" proceeding is deleted as an overly narrow reference to the forms of contempt proceedings.

In paragraph (3) of this subsection, references

to "mileage" are added for conformity to CJ § 9-202, which provides for compensation of witnesses in civil cases. This addition is implicit in the former reference to "compensation from the State for attendance or travel".

The only other changes are in style.

As to paragraph (1) of this subsection and oaths, see Article 1, § 9 of the Code, which authorizes an affirmation to be made in place of an "oath".

As to paragraph (1) of this subsection and depositions, see Chapter 400 of the Maryland Rules.

Defined terms: "Department" § 1-101  
"Person" § 1-101 "Secretary" § 1-101

(TR § 12-108). Authority to subpoena witnesses and take testimony.

(a) In general. -- In any matter subject to its jurisdiction, the Administration may subpoena any person or documents and take the testimony of any person, in the same manner and with the same fees and mileage as provided for by law in civil cases.

(b) Enforcement by circuit court. -- If any person fails to comply with a lawful order or subpoena issued by the Administration, the Administration may petition a court of competent jurisdiction to compel obedience to the subpoena or order and to compel the production of relevant documents and other evidence.

REVISOR'S NOTE: This section formerly appeared as Article 66 1/2, § 2-319(e) and (f).

Its provisions, which recently were enacted by ch. 645, Acts of 1975, are retained in this subtitle and substituted for the older, essentially similar but more detailed, provisions of former Article 66 1/2, § 2-316, to provide one uniform statement of authority and procedure for the issuance of subpoenas. (As to the balance of former § 2-319, see Subtitle 2 of this title.)

The only other changes are in style.

Definitional cross reference:

"Administration": § 11-102

(66 1/2 § 2-316). Department may summon witnesses and take testimony.

(a) Authority of Commissioner; production of documents. --The Commissioner and officers of the Department designated by him may summon witnesses on behalf of any party in interest to give testimony under oath or to give written deposition upon any matter under the jurisdiction of the Department. A summons may require the production of relevant books, papers, or records.

(b) Service. --Every summons shall be served at least 5 days before the return date, either by personal service made by any person over 18 years of age or by registered mail, but return acknowledgment is required to prove the latter service.

(c) Jurisdiction to enforce section. --Any court of limited original jurisdiction in any county or in Baltimore City in which the person to whom the summons is directed resides, regularly carries on business, or may be found,

shall have jurisdiction, upon application by the Department, to enforce all lawful orders of the Department under this section.

(d) Order of enforcement. --No person shall be punished for failure to obey any summons issued pursuant to subsection (a) unless an order of enforcement has been issued by a court pursuant to subsection (c) and served on the person either (i) in the manner provided in subsection (b) for service of a summons, or (ii) in any other manner provided by law.

(66 1/2 § 2-319).

...  
(e) Procedure. --The Administration may subpoena any person or documents, and take the testimony of any person in the same manner as is prescribed in civil cases, with the same fees and mileage as may be provided by law in civil cases.

\* (f) If any person fails to comply with a lawful order or subpoena issued by the Administration, the Administration may petition the circuit court to compel obedience to the subpoena or order and to compel the production of relevant documents and other evidence.

...

(56 § 306). Powers of Board.

The Board has the power to make all bylaws and rules, not inconsistent with the Constitution and laws of this State which may be reasonably necessary for the proper performance of its duties and the regulations of the proceeding before it. The Board shall adopt and have an official seal. In carrying out the provisions of this subheading, the Board may, under the hand of its chairman and the seal of the Board, subpoena witnesses and compel their attendance and may also require them to produce books, papers or documents in a case involving the revocation of a license, for practicing, or offering to practice under the title of registered professional forester without a license. Any member of the Board may administer oaths of (sic) affirmation to witnesses appearing before the Board. If any person refuses to appear as a witness before the Board, or refuses to testify, or refuses to produce any books, papers, or documents, the Board may present its petition to the circuit court of the county where the witness resides, setting forth the facts, and thereupon the court shall, in a proper case, issue a subpoena to the person, requiring his attendance before the circuit court and there to testify or produce books, papers, or documents as may be deemed pertinent and necessary by the Board. Any person failing or refusing to obey the subpoena or order of the circuit court may be proceeded against as for refusal to obey any other subpoena or order of the court.

(FI § 11-413). Investigatory powers of Commissioner.

...  
(c) Hearings.

In investigating a written complaint made under this section, the Commissioner may:

(1) Hold a hearing on the complaint at a time and place in this State that are reasonably convenient to the parties involved;

(2) Subpoena witnesses;

(3) Take depositions of witnesses who reside outside of this State in the same manner as provided for depositions to be taken in civil actions in courts of record;

(4) Pay witnesses the same fees and mileage for their attendance as provided for witnesses in civil actions in courts of record; and

(5) Administer oaths.

(d) Enforcement of orders and subpoenas.

(1) If any person fails to comply with an order or subpoena of the Commissioner under this subtitle or to appear as a witness and testify concerning any matter about which the person may be interrogated under this subtitle, the Commissioner may file a petition for enforcement with the circuit court of any county or an appropriate court of Baltimore City.

(2) On petition by the Commissioner, the court, if it finds it appropriate to do so, shall order the person to:

(i) Obey the order or subpoena; and

(ii) Produce any necessary records, documents, or other evidence.

(HO § 2-312).

(a)...

(2) The Board [of Examiners for Audiologists] may issue subpoenas, administer oaths, and examine witnesses.

...

(HO § 3-205).

(a) In addition to the powers set forth elsewhere in this title, the Board [of Chiropractic Examiners] may:

(2) Summon witnesses, administer oaths, take affidavits, and take testimony about matters that relate to the duties of the Board; and

...

(HO § 4-317).

...

(f) The Board [of Dental Examiners] may administer oaths and take depositions of witnesses in any proceeding under this section.

(g) (1) Over the signature of the Board secretary, the Board may issue subpoenas to witnesses in connection with any proceeding under this section.

(2) The Board shall issue subpoenas on behalf of the individual if the individual requests in writing that the Board do so.

(3) If, without lawful excuse, a person disobeys a subpoena from the Board or an order by the Board to take an oath or to testify or answer a question, then, on petition of the Board, a court of competent jurisdiction may punish the person as for contempt of court.

...

(HO § 5-312).

...

(e) The Board [of Electrologists] may issue subpoenas and administer oaths in connection with any proceeding under this section.

...

(HO § 10-205).

(a) In addition to the powers set forth elsewhere in this title, each member of the Board [of Examiners in Optometry] may administer oaths and take affidavits for any matter under the jurisdiction of the Board.

...

(HO § 10-314).

...

(d) The Board may issue subpoenas in connection with any investigation of charges under § 10-312 of this subtitle or proceeding under this section.

...  
(HO § 14-501).

...  
(g) The Commission [on Medical Discipline of Maryland] may issue subpoenas and administer oaths in connection with any investigation under this section and any hearing or proceeding before it.

(HO § 14-512).

(a) (1) Each hospital and related institution shall report to the Commission:

(i) If the hospital or related institution denies the application of a physician for staff privileges or limits, reduces, or ends the staff privileges of a physician for reasons that might be grounds for disciplinary action under § 14-504 of this subtitle; or

(ii) If a physician voluntarily resigns from the staff of the hospital or related institution while under a formal accusation under § 14-504 of this subtitle.

...  
(3) The minutes or notes taken in the course of determining the denial, limitation, reduction, or termination of the staff privileges of any physician in a hospital or related institution are not subject to review or discovery by any person.

...  
(c) The Commission may enforce this section by subpoena.

...  
(e) A report made under this section is not subject to subpoena or discovery in any civil proceeding other than a proceeding arising out of a hearing and decision of the Commission under this title.

(HO § 15-205).

(a) In addition to the powers set forth elsewhere in this title, the Board [of Podiatry Examiners] may:

...  
(2) Issue subpoenas and administer oaths in connection with:

(i) Any investigation under § 15-312 of this title; or

(ii) Any hearing under § 15-313 of this title.

...

(HO § 16-313)

...  
(e) (1) Through its chairman or vice chairman, the Board [of Examiners of Psychologists] may issue subpoenas and administer oaths in connection with any proceeding under this section.

(2) The Board shall issue subpoenas on behalf of the individual if the individual:

- (i) Requests that the Board do so; and
- (ii) States under oath that the testimony or evidence sought is necessary to the individual's defense.

(HO § 19-312).

(a) ...

(2) The Board [of Examiners for Speech Pathologists] may issue subpoenas, administer oaths, and examine witnesses.

...

*Elizabeth Buckler Veronis*

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